

# **2002 Annual Report of the Lawyer Assistance Program of the State Bar of California**

**In Compliance with 2001 Senate Bill 479**

**March 1, 2003**

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# Charts and Graphs

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# Introduction

This is the first Annual Report of the Lawyer Assistance Program (“LAP” or “Program”) of the State Bar of California, as required by Section 6238 of the Business and Professions Code. As the statute provides, the Annual Report includes information concerning the number of cases of attorney participants accepted, denied, or terminated with compliance or noncompliance, and annual expenditures related to the Program. It also addresses the development of the Program in its first year, and its status at the end of 2002.

## Executive Summary

In one year the State Bar has taken its new Lawyer Assistance Program from a legislative concept to a successful operational entity. More than 150 lawyers have sought its help, most of whom are now experiencing success in recovery. The numbers can only grow. The State Bar’s disciplinary process has, for the time being, been relieved of some of the burden and expense of adjudicating complaints against many participants, and the clients of those participants now enjoy the protection of close supervision of their attorneys if they continue to practice.

These troubled lawyers have come to the Lawyer Assistance Program by all the paths the Legislature foresaw: by referral from the Bar’s system of discipline, voluntarily at the early signs of complaint and investigation, or just by personal choice. They are carefully evaluated for 90 days but their participation in the Program begins at once, with crisis intervention, treatment referrals, group and peer support, and professional counseling if required.

These accomplishments are due in no small part to the Program’s staff. It is directed by Janis Thibault, a clinical professional who formerly headed the similar program established by the California Medical Board and has extensive experience with this program model. The staff that she and the Executive Office of the State Bar have assembled represent the highest degree of professionalism and skill. In addition, they have been able to recruit highly skilled group facilitators and volunteer support from some of the state’s best clinicians, who are serving on statewide evaluation committees.

The Program has also attracted the volunteer efforts of twelve highly credentialed members of its Oversight Committee. The Committee is composed of medical, psychiatric and substance abuse specialists, lawyers with extensive experience in recovery, and institutionally experienced public members. All the members are appointed by the President *pro tem* of



the Senate, the Speaker of the Assembly, the Governor, or the Board of Governors of the State Bar.

There is no shortage of lawyers seeking help. Lawyers sought it out even before the Program's doors were opened and they have been coming in increasing numbers since. As in every other program of its kind not all the participants are successful, although the Program's experience so far suggests a very high record of accomplishment. The requirements for completion are strict, and require far more sobriety and stability than one year can measure. Every indication, however, is that the Program will fully serve the purposes the Legislature intended: protecting the public while helping rescue as many lawyers as it can from the grip of the chronic, progressive and potentially fatal diseases afflicting them.

To this end the Program has put every necessary element of its operation in place. It has published, and the Board of Governors has approved, rules and criteria that govern admission, participation, completion and withdrawal from the Program. It has organized evaluation committees statewide, and has established local professionally facilitated peer group meetings that its participants attend. It reaches out through a wide variety of media to the profession, the judiciary, and the general public.

Although independent of the Bar's disciplinary system, the LAP closely coordinates its procedures with the Office of the Chief Trial Counsel and the State Bar Court so that early intervention and rehabilitation can take the place of discipline wherever appropriate. And it widely promulgates advice and materials to help educate troubled lawyers even before they come in contact with any formal procedure.

After only one year much remains to be done, but the Lawyer Assistance Program has achieved widespread notice and success in its first twelve months and shows every sign of achieving even more in future years.



# The Year in Review

## The Problem is Assessed

Lawyers lead stressful lives and suffer from addictions and mental health issues at a much higher rate than the general public. By practicing law while so afflicted, lawyers risk not only their own livelihoods and reputations but also the rights, positions, well-being and sometimes even the lives of their clients. Their disease-related mistakes and mishaps pervade the State Bar's system of discipline and undercut the reputation of the profession everywhere.

## The Report of the Senate Office of Research

In February 2001 the Senate Office of Research published a report, *Protecting the Public by Assisting Addicted Lawyers in Overcoming Substance Abuse*, concerning the incidence and costs of substance abuse and mental health issues among California lawyers. The report documented widespread problems in California's legal system. The American Bar Association (ABA) estimates that at some time during their lives 15% to 18% of the nation's lawyers suffer from alcoholism, a ratio significantly above the 10% of the general adult population so afflicted. According to *Law and Psychology Review*, another 10% of practicing attorneys suffer from some form of psychological distress. Applying these estimates to California's then-practicing 135,805 lawyers, the report calculated that up to 28%, or 38,000, of our lawyers may suffer from chemical dependency, mental health issues or both at some time during their lives.

It is widely recognized, by the ABA's Commission on Lawyer Assistance Programs among others, that many malpractice and misconduct charges arise from chemical dependency or emotional stress. Processing and adjudicating disciplinary charges consumed 80% of the budget of California's State Bar, the Office of Research noted, yet less than 1% of the Bar's budget went to prevention rather than discipline.

Before the Lawyer Assistance Program was created, the burden of helping lawyers deal with chemical dependency and mental health issues fell on two small Bar-sponsored programs: the Other Bar, and the Lawyers Personal Assistance Program (LPAP). Both have excellent records, but neither was equipped or funded to address the scope of the problem or to coordinate its activities with the Bar's discipline system.

The Other Bar is a network of volunteer California lawyers, judges and law students who deal with chemical dependency on a personal and strictly confidential basis by providing ongoing assistance and support to individuals who seek it. These volunteers hold regular confidential meetings and help each other and family members when chemical dependency



takes its toll. The Other Bar operates a 24-hour toll-free telephone service for information, emergencies and referral.

The Lawyers Personal Assistance Program provided counseling services and crisis intervention to lawyers who seek help for problems such as substance abuse, stress and depression, by calling its hotline. Callers were frequently referred to a local therapist for up to three visits, at no cost to the caller if necessary. Many of the therapists were lawyers themselves. In recent years the program assisted approximately 175 lawyers a year.

The Report of the Senate Office of Research looked to bars in other states for comparisons, and found that all 50 states have some form of program for lawyers suffering from chemical dependency (and, in many states, mental health issues as well.) These range from small voluntary programs such as California's Other Bar to large centralized programs administered by state bars. The report noted, for example, that the state of Washington has had a substantial program since 1987, when it was ordered created by the state Supreme Court. Since then it has aided 2,886 Washington lawyers and, in 2000-2001, had an annual budget of \$690,485. Oregon's State Bar has an extensive program for its 11,000 lawyers, with a budget of \$1.1 million, but it is estimated that the program has saved far more than that in disciplinary and malpractice costs. The state bars of Texas and Florida also administer large dues-supported programs for impaired lawyers.

The Office of Research also looked to other professions for examples of treatment programs coordinated with discipline and found that California's Medical Board, for 20 years, has diverted addicted physicians caught in its disciplinary system and those who volunteer, into a rehabilitation and monitoring program that claims a 74% success rate. Physicians who successfully complete the program in 5 years may have charges pending against them dropped. According to the Medical Board, this can save up to \$29,000 for each treated physician in costs of investigations, hearings and probation monitoring that would otherwise be incurred.

Mindful of these models, the Office of Research appended to its Report statutory language on which the Legislature might base a solution.

### **The Role of the Board of Governors of the State Bar of California**

At the same time, an entirely independent investigation by the Board of Governors of the State Bar of California was leading to similar conclusions. In August 2000 the Board heard a presentation from the Other Bar and the Lawyers Personal Assistance Program indicating that at least half of the misconduct charges giving rise to State Bar disciplinary proceedings were related to problems of substance abuse and mental health. Concerned, the Board directed its staff to investigate possible methods for the early identification and diversion of impaired attorneys.



As part of its inquiry, the Office of the Executive Director contacted the California Medical Board for information on its diversion program. Upon discovering in early fall that Senator Burton had commissioned a study of the issue by the Senate Office of Research (see previous section) and was interested in sponsoring legislation to address the issue, State Bar representatives met with staff representatives of Senator Burton to discuss the prospect of jointly-sponsored legislation.

As a result of that meeting, a working group was formed that included representatives from the Other Bar, the Lawyers Personal Assistance Program, the Office of Chief Trial Counsel, the State Bar Court, the State Bar Office of Governmental Affairs, the Medical Board of California, and the Senate Office of Research. Their close collaboration soon produced draft legislation that became the beginnings of the Program.

## The Legislature Responds

On February 22, 2001, Senator John Burton, the President *pro tem* of the California State Senate, introduced Senate Bill 479 (Appendix A), requiring the Board of Governors of the State Bar of California to establish and administer an Attorney Diversion and Assistance Program. SB 479 required the Program to provide services for the treatment and recovery of attorneys due to the abuse of drugs or alcohol, or due to problems of mental health.

Senate Bill 479 set forth three ways a lawyer could enter the Program: 1) voluntarily; 2) by referral of the Office of the Chief Trial Counsel; or 3) by referral of the State Bar Court. The Board of Governors was required to establish an Oversight Committee consisting of twelve members having stated qualifications, to be appointed by the Board of Governors, the Senate Rules Committee, the Speaker of the Assembly and the Governor. The bill addressed the objectives of the program, the powers and duties of the administrators, criteria for completion of and termination from the Program, confidentiality of records, and outreach to Bar members, the legal community and the general public.

The bill authorized the Bar to establish three complementary methods of financing. First, \$10.00 of each active member's annual dues would be allocated to the administration of the Program. Second, the costs of individual participation would be borne by the participants themselves. Finally, the Program may seek alternative sources of funding for the Program, with any savings resulting from these efforts being returned to the State Bar. Additionally, the bill permitted the Program to charge an administrative fee to participants (no administrative fee was set or charged in 2002).

After committee hearings and with minor amendments, SB 479 passed both houses of the Legislature and was signed by the Governor on July 30, 2001. Its effective date was January 1, 2002.





## The Project is Staffed

The State Bar promptly placed responsibility for the new Lawyer Assistance Program directly in the Office of the Executive Director, ensuring both management at the highest level and independence from the disciplinary process, a practical requirement for confidentiality and trust. Hiring began immediately.

The Director, Janis Thibault, was probably better qualified by skill and experience than anyone else in the state. For the past two years Ms. Thibault had been the Program Administrator of the California Medical Board's Physician Diversion Program, the primary model used by the Legislature for the LAP. She had served as a case manager in that program for five years before her elevation. She is a certified addiction specialist who has worked in the field since 1985. She has been a marriage and family therapist for 23 years. Upon her arrival at the State Bar's Los Angeles office, she and the Office of the Executive Director worked steadily to build the Program from the ground up.

The Lawyers Personal Assistance Program, which had been doing similar work for lawyers who sought its help, was soon merged with the LAP, and Richard Carlton, who had managed the LPAP since 1991, was appointed Deputy Director of the LAP. Mr. Carlton holds a Master's Degree in Public Health from the University of California at Berkeley and has worked with lawyers and the judiciary on issues relating to chemical dependency and mental health for sixteen years.

The Director and Deputy Director then hired Case Managers, all of whom have Master's degrees with substantial expertise in, and frequently personal experience with, substance abuse treatment and mental health.

The full-time staff is strongly supported by the Program's Group Facilitators, each of whom conduct weekly group sessions with local participants. These facilitating therapists consult at least weekly with Case Managers on individual cases, attend evaluation committee meetings providing reports and recommendations, provide 24-hour assistance to participants and maintain attendance records of the group meetings.

The current full-time and contract staff of the LAP are listed in Appendix B.

## Intake, Assessment and Participation Begin

News of the LAP spread quickly. Even before the LAP took shape, one lawyer contacted Ms. Thibault, still at her job at the Medical Board, asking to be admitted. In February lawyers began to seek out the LAP in larger numbers. Knowing its response must be quick and compassionate, and that an attorney who seeks help should not be made to wait, the LAP placed participants in the Program immediately.



The LAP's optimal assistance model is designed to help participants at once. When a participant enters the Program, the LAP clinical staff immediately focuses on life-threatening issues, medical needs and emotional support. The LAP staff assists in arranging prompt admission to treatment when needed, whether at a treatment facility or a local emergency room. As soon as possible participants begin to attend LAP's professionally facilitated peer group meetings. Additional support elements are added to the participant's program as soon as practicable, and usually include introduction to attorneys in the Other Bar, intake sessions with the local LAP Case Manager, meetings with abstinence-based programs and community self-help groups, and, if indicated, outside professional evaluation.

Experience already has shown that these early interactions are essential. They frequently help break through the many layers of denial that characterize the diseases, and introduce the participant to the services and direction of the LAP. These requirements also foster the formation of critical personal alliances and friendships that begin to lessen the isolation and shame typical of those afflicted.

During a participant's first 90 days the LAP conducts a comprehensive evaluation. In that process a participant meets regularly with a LAP Case Manager, weekly with a facilitated group, and, if appropriate, begins lab testing and meets with an outside addiction or psychiatric specialist for evaluation. At the end of the period, the attorney meets with an Evaluation Committee. The Committee consists of a Medical Doctor (who is usually a psychiatrist), a clinician (who may be a Certified Alcohol Drug Counselor, a Marriage and Family Therapist, a Licensed Clinical Social Worker, a Psychologist or a Registered Nurse) and a local attorney with experience in recovery, who as a sympathetic peer helps balance the clinical effort with the realities of practicing law in recovery. Many highly qualified people around the state have volunteered for these positions, even though the committee members are unpaid volunteers.

The Evaluation Committee reviews available documentation (including reports from the Case Manager, Group Facilitator, evaluators, treatment facilities) and interviews the participant at length. The individualized components of the participant's long term recovery program are then decided, to be monitored and adjusted as needed until the participant no longer requires the full structure and support of the LAP. A graphic description of the LAP's intake process appears in Appendix C.

This group – the Case Manager, the Group Facilitator, and the Evaluation Committee – will follow the participant throughout his or her program of structured recovery, and the Committee will eventually determine whether the participant has successfully completed the Program. This unique process ensures continuity of treatment, provides a multidisciplinary perspective, and avoids some of the challenges faced by a sole clinician monitoring recovery, which may include perceived power struggles, personality clashes and resistance to authority. It also invites the participant to become part of the LAP recovery team.



## The Program Reaches Out

SB 479 requires that the LAP engage in specific kinds of outreach to members of the California Bar, the legal community and the general public, which it has actively done. The statute requires:

1. **“ . . . the development and certification of minimum continuing legal education courses relating to the prevention, detection, and treatment of substance abuse . . . ”**
  - In August the LAP sponsored a Minimum Continuing Legal Education (MCLE) event in Los Angeles for the Respondents’ Defense Bar, lawyers who represent members of the Bar before the Office of Chief Trial Counsel and the State Bar Court.
  - In October the Program provided seven hours of MCLE training at the Annual Convention of the State Bar in Monterey, California, in cooperation with the Other Bar.
2. **“ . . . informing all members of the State Bar of the program’s existence and benefits . . . ”**
  - In February the Program completed and circulated to lawyers statewide a brochure entitled *State Bar of California: Lawyer Assistance Program*. The brochure is attached to this Report as Appendix D.
  - In June, at the invitation of a member of the Office of the Chief Trial Counsel, the Program’s Director appeared on *Legal Incite*, a one-hour interview and call-in radio show for lawyers on CNET Radio, 910 AM.
  - In September the Program published and distributed without charge *The Wellness Guide*, a booklet describing the LAP but concentrating on the preventive aspects of its mission by providing stress management suggestions for lawyers and basic substance abuse information. The text of the booklet is Appendix E.



- The Program received repeated coverage in the *California Bar Journal*, a monthly State Bar publication sent to every member, in October and December 2001 and January and July 2002.
  - The Program was featured by California legal periodicals such as the *Los Angeles Daily Journal*.
  - The Program was the subject of numerous press releases circulated to the media and posted on the Bar's web site ([www.calbar.ca.gov](http://www.calbar.ca.gov)) announcing hirings, appointments and organization.
  - The Program selected MWW, a national public relations firm experienced in social marketing, to advise the Program in developing advertising and communication strategies to reach all members of the bar.
  - The Program sent a brochure describing itself and encouraging its use to the State Bar's approximately 179,000 members with their dues bills.
3. **“ . . . Working in coordination with the judicial branch to inform the state's judges of the program's existence and availability as a disciplinary option . . . ”**
- The LAP has appeared before numerous groups of judges to explain its mission and to invite assistance from the judiciary, including the Inns of Court and all four federal judicial districts in California. The LAP Director and the Chief Trial Counsel also described the program's resources to a meeting of the state court's presiding judges and court executives in Orange County on May 3, 2002.
  - The Program has distributed among judicial groups an announcement entitled *New Help for Impaired Attorneys*, describing the Program and encouraging judges and court staff to support impaired attorneys in getting help, or to call the LAP themselves for advice. A similar article was published in the newsletter of the California Judges' Association.
  - The Program has retained Polaris Research and Development, after competitive bidding, to produce educational videotapes for the judiciary and the membership describing the Program. The project is sponsored by the Center for Judicial Education Research of the Judicial Council of California.



4. “. . . mak[ing] members [of] . . . the general public aware of the existence and availability of the . . . program.”

- The LAP has received widespread coverage in media of general circulation such as *The Los Angeles Times* and *The Metropolitan News-Enterprise*.
- The Program is seeking a contractor to produce Public Service Announcements aimed at the general public and to place them on television and radio.

5. “. . . working in cooperation with organizations that provide services and support to attorneys with issues related to substance abuse.”

- The Program frequently recommends regular attendance by participants at meetings of abstinence-based self-help groups such as the Other Bar and Alcoholics Anonymous.
- The Program has established working relationships with various treatment facilities throughout the state and the nation to obtain the best and most cost-effective treatment available for participants.
- The Program’s Director was invited to make a presentation in March to the annual meeting of the Other Bar in which she described the new program and its relationship to the Other Bar, the Lawyers Personal Assistance Program, the Office of Chief Trial Counsel and the State Bar Court.
- Representatives of Program staff and of the LAP Oversight Committee attended the annual conference of Co-LAP, the American Bar Association’s Commission on Lawyer Assistance Programs, in Portland, Maine in October.
- Representatives of Program staff and of the LAP Oversight Committee attended the annual conference of the National Association of Drug Court Programs in Washington, D.C.



Outreach initiatives were limited in scope in 2002 by the immediate operational needs to hire qualified staff and create a program structure to provide the level of service required by the statute. Since these operational goals have now been met, outreach initiatives in 2003 will be substantially enlarged.

## **The Program's Governance and Oversight are Established**

Senate Bill 479 requires the Board of Governors to establish a committee to oversee the operation of the Program. The statute specifically sets forth the qualifications that individual members must have. (Bus. & Prof. Code § 6231(a).) The Board acted promptly, hiring the new Director in November 2001. At its January 2002 meeting the Board of Governors appointed its allotted six members to the Committee. The Senate Rules Committee, the Speaker of the Assembly and the Governor soon made their appointments, and the composition of the committee was established as set forth in Chart A on the following page and in Appendix F.

The Oversight Committee proposed rules and regulations for the Program, as allowed by the statute. (§ 6231(c).) The proposed rules were refined, adopted and sent out for public comment. These Rules in final form are Appendix G.

The Oversight Committee wrote and adopted Proposed Criteria for Acceptance, Denial, Completion of, or Termination From The Lawyer Assistance Program. The final criteria are Appendix H.

The Oversight Committee formulated and adopted Rules Governing The Financial Assistance Plan of the State Bar of California's Lawyer Assistance Program to implement the statutory instruction that the LAP "ensure that no member is denied acceptance into the Program solely due to the lack of ability to pay." (§ 6235(b).) These Rules in final form are Appendix I.

The statute encourages the LAP to explore possible funding alternatives in addition to members' dues. (§ 6140.9.) Staff contracted for and received an extensive report entitled Alternative Sources of Funding. A proposed course to pursue alternative fundraising avenues was adopted.

In each instance that the Oversight Committee adopted rules or criteria, the Board of Governors, at its next meeting, adopted them on an interim basis by emergency resolution. Then, after public comment had been received and considered, the Board of Governors adopted the rules and the criteria in final form at its December 2002 meeting.



<b>Members of the Oversight Committee</b>			
<b>Name</b>	<b>Background</b>	<b>Appointed By</b>	<b>Statutory Role</b>
Kellie M. Condon, Ph.D.	Director of chemical dependency treatment for the Veterans Affairs Medical Center in Fresno	Board of Governors	Mental Health Professional
John H. Shale, M.D., J.D.	Medical Director of the San Diego County Adult Mental Health Services	Board of Governors	Mental Health Professional
Norman T. Reynolds, M.D., F.A.P.A.	San Jose psychiatrist in private practice	Board of Governors	Physician
David P. Dawson, J.D.	Attorney in private practice in San Francisco	Board of Governors	President of the Other Bar
Stewart Hsieh, J.D.	Attorney in private practice in Los Angeles; former President of the Medical Board of California	Board of Governors	Attorney
Edwin Caldwell, L.L.B.	Attorney in private practice in San Francisco	Board of Governors	Attorney
James E. Blancarte, J.D.	Attorney in private practice in Los Angeles; former member, Los Angeles City Fire Commission	Governor	Attorney
David S. Hobler, J.D.	Attorney in private practice in Mill Valley; founder and director, Fit in Recovery	Governor	Attorney
Richard Carrillo	Investigator, California Dept. of Motor Vehicles; former teacher and police officer	Governor	Public Member
Dorothy Tucker, Ph.D., Ph.D.	Psychologist; Los Angeles Police Department; member, State Bar Board of Governors	Governor	Public Member
Mitchell Englander	Public Affairs Practitioner; President, CA AAPC; Board Member, LA Chapter of American Diabetes Association	Speaker of the Assembly	Public Member
Michael S. Parr, M.D.	Physician and addiction specialist in private practice in Sacramento	Senate Rules Committee	Public Member

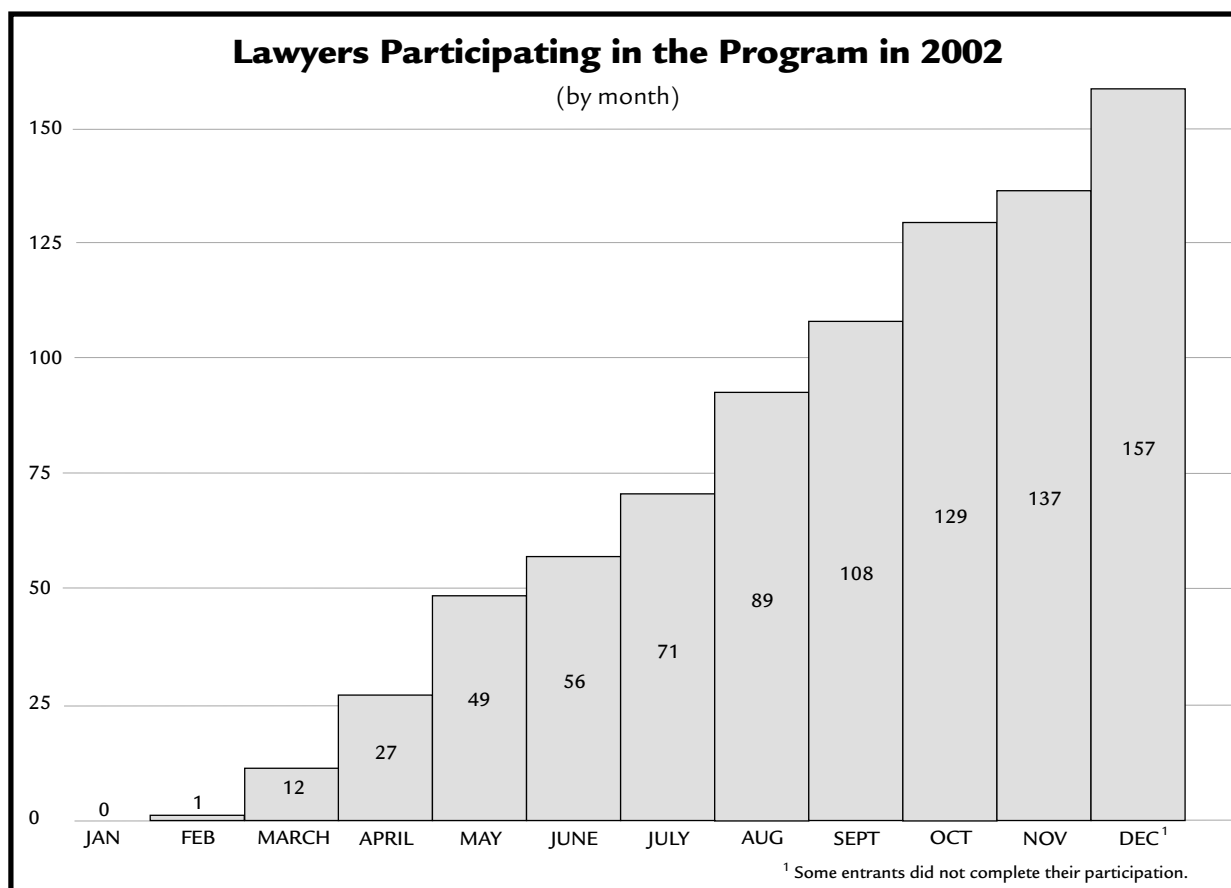
***Chart A: Members of the Oversight Committee.***



# The LAP at Year End

## 157 members of the Bar Participate

As shown in Chart B, by year end, 157 attorneys had become participants in the LAP. Fifty-eight of the participants were referred by the Office of Chief Trial Counsel or the State Bar Court. Another 58 referred themselves, aware that investigations were pending. Forty-one referred themselves without any charges or investigations pending.



**Chart B: Lawyers Participating in the Program in 2002.**

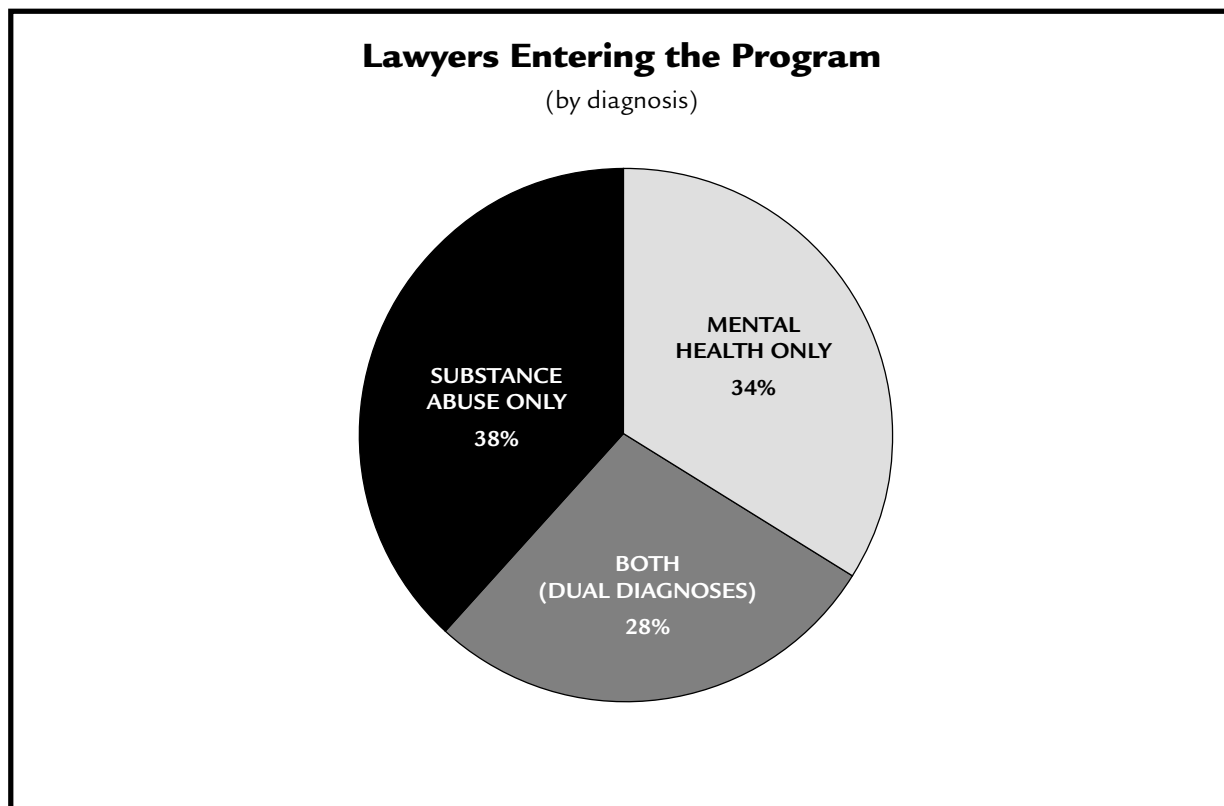
By year end, 57 of the participants were sufficiently advanced in the Program to meet with their Evaluation Committees at the end of the 90-day evaluation period.

The medical reasons for admission varied, and reflected the legislative wisdom in including mental health in the scope of the Program. Fifty-nine participants were admitted for problems of substance abuse only, 54 were admitted for problems of mental health only, and 44 were admitted with “dual diagnoses,” problems relating both to substance abuse and mental health. By diagnosis the participants were distributed as shown in Chart C on page 14.





The LAP has not found it necessary to deny admission to any applicant. One participant has been terminated for noncompliance with the Program.



*Chart C: Lawyers Entering the Program.*

## The LAP Coordinates with the State Bar Discipline System and with Other Agencies

### State Bar Discipline System

The LAP's relationships with the Office of Chief Trial Counsel and the State Bar Court are complex, and are evolving as experience accumulates.

Prior to the passage of SB 479, the Acting Chief Trial Counsel expressed his commitment to the goals of the legislation, and began to develop policies and procedures to implement it. This commitment was echoed and reinforced after the bill's passage by his successor, the newly-appointed Chief Trial Counsel. For the Office of the Chief Trial Counsel (OCTC) the statute represents a significant shift in the handling of disciplinary cases involving lawyers with substance abuse or mental health issues, since it promotes a collaborative approach to treatment and rehabilitation instead of relying on the traditional adversarial model. The Chief Trial Counsel announced at the outset that OCTC staff would be required to cooperate fully with the goals of the statute.



For more than a year all OCTC personnel, from intake through trial, have been required to notify one of two designated attorney coordinators as soon as any case presents an issue of chemical dependency or mental health. From that point on the coordinators track the case to monitor its involvement with the LAP. As soon as the issue arises — whether or not OCTC takes any disciplinary action against the respondent attorney — the coordinators make sure that a LAP brochure is provided to the respondent with the suggestion that the attorney immediately and voluntarily refer him- or herself to the LAP for help. When discipline is warranted, OCTC will not resolve a case having chemical dependency or mental health issues unless the respondent is evaluated by the LAP, or unless a similarly qualified expert in addiction or mental health determines whether public protection and the health of the respondent require specific conditions of probation to address the addiction or mental health issue. OCTC coordinators and the assigned Deputy Trial Counsel also inform respondents about the State Bar Court's Pilot Program.

Effective October 1, 2002, the State Bar Court implemented its Pilot Program for Respondents with Substance Abuse or Mental Health Issues. The Pilot Program works in cooperation with the LAP to ensure that attorneys against whom disciplinary proceedings are pending receive treatment for their substance abuse or mental health issues while, at the same time, ensuring adequate protection for the public, the courts and the profession.

In August 2002 the Board of Governors adopted rules of procedure for the operation of the Pilot Program (rules 800 through 806) and, in September 2002, the California Supreme Court authorized the State Bar Court to proceed to implement the Pilot Program.

The Pilot Program applies only to those cases in which (1) the attorney has a current disciplinary proceeding pending against him or her; or (2) there is a pending disciplinary investigation which will ultimately result in the imposition of discipline which must be imposed by the State Bar Court or the California Supreme Court. In those cases, an attorney who has a substance abuse or mental health issue which either precipitated or contributed to the misconduct may apply to participate in the State Bar Court's Pilot Program.

### **Other Agencies**

The LAP and the Other Bar continue in their mutual support and assistance. The Other Bar continues to inform potential applicants of the Program, and the Program recommends that participants regularly attend meetings of the Other Bar and other abstinence-based programs, as appropriate.

The LAP is active in the American Bar Association's Commission on Lawyer Assistance Programs (Co-LAP), which acts as a central clearinghouse for the programs of all states



and territories, holds conferences, conducts training sessions, publishes a regular newsletter and provides a listserve link between LAP directors.

The Program has cooperated with the state's judiciary by co-sponsoring training materials and publishing announcements of the Program. In an early sign of their growing awareness of the Program, four times in 2002 judges requested the assistance of the LAP regarding attorneys who were demonstrating behaviors of concern.

## The LAP Looks to the Future

Since the Program requires far more than one year's sobriety and stability for completion, it is premature to measure its progress by the number of lawyers who have successfully completed their programs. The basic requirements for completion are set out in section III of the *Criteria for Acceptance, Denial, Completion of, or Termination from the Lawyer Assistance Program* (Appendix H). They are:

1. The participant has maintained three years of continuous sobriety<sup>1</sup> or, in cases of mental health, stability;
2. The participant has made lifestyle changes sufficient to maintain ongoing recovery or stability;
3. The participant has satisfied the terms of the participation agreement; and
4. The participant has participated in the Program for a period of five years<sup>1</sup>, or as otherwise deemed appropriate by the Evaluation Committee.

By any other measure, however, the progress of the Program is unmistakable. The number of applicants and participants continues to grow, and with it the number of professionally facilitated peer group meetings around the state. Calls to the Program's toll-free phone line continue to increase. Though the number of client-related errors, client complaints, malpractice charges and other mishaps that the LAP is preventing cannot be quantified, it is probably accurate to state that the State Bar's disciplinary system has been relieved, at least for a time, of some of the burden of 58 pending discipline cases, 58 investigations, and an unknown number of potential cases and investigations that participation in the LAP may forestall. There is every reason to believe those savings will increase.

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<sup>1</sup> Studies have shown an initial decrease in the rate of relapse after three years of continuous sobriety, and a significant decrease in the rate of relapse after five years.



## Income and Expenditures in 2002

The Lawyer Assistance Program is funded by a statutory \$10 fee assessed of every active member of the State Bar. The amount collected for the LAP in the start up year 2002 was \$1,405,431. As shown in the chart and graph on the following page, expenditures from this fund in 2002 increased as staffing and the program gained momentum.

In addition to the statutory amount of \$1,405,431 made available from dues in 2002, \$200,000 was budgeted in the Legal Education and Development Fund to fund the LAP Financial Assistance Program mandated by Business and Professions Code Section 6235(b) to assist attorneys who cannot afford the treatment and monitoring costs of the LAP.

From the statutory amount of \$1,405,431 an amount of \$642,122 was spent on operations and Oversight Committee expenses, leaving an operating surplus of \$763,309. This surplus was then reduced by the transfer of capital assets to the Fixed Assets Fund, leaving a year-end fund balance of \$753,586. Of the \$200,000 reserved from the Legal Education and Development Fund budget, \$45,900 was expended to assist attorneys who could not afford treatment and monitoring costs. The Board of Governors elected to transfer the 2002 year-end fund balance of \$753,586 to the Public Protection Reserve fund consistent with Business and Professions Code Section 6140.9.

In 2003 the LAP will be operating with a budget of \$1,424,557 for operational and Oversight Committee costs and a budget of \$200,000 in the Legal Education and Development Fund for the Financial Assistance Plan. The details of the Financial Assistance Plan are in the rules attached as Appendix I.

## Conclusion

In the first year of operation the Lawyer Assistance Program has met the challenge of establishing a new program from the ground level while simultaneously providing supportive and structured assistance to over 150 attorneys. The impressive response to the LAP in its first year confirms the compelling need for assistance among California attorneys.

The results also highlight the suitability of this model to the needs of this community. Moving forward, plans for enhanced outreach and education will foster increased reliance on the LAP as the prominent resource for attorney assistance and diversion.





## The LAP Intake Process



*Total process, from first contact to Evaluation Committee, is approximately 90 days.*